

ESTTA Tracking number: **ESTTA488519**

Filing date: **08/10/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Popcycle Motors, LLC		
Entity	Limited Liability Company	Citizenship	Missouri
Address	1100 Sara Matthews Drive, Wildwood, MO 63005 UNITED STATES		

Attorney information	William Higley The Higley Law Group, LLC 165 North Meramec Ave. St. Louis, MO 63105 UNITED STATES Bill@higleylawgroup.com Phone:314-288-8162
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Applicant Information

Application No	85564009	Publication date	07/31/2012
Opposition Filing Date	08/10/2012	Opposition Period Ends	08/30/2012
Applicant	Speechly, David P 1085 Yorkshire Place Danville, CA 94506 UNITED STATES		

Goods/Services Affected by Opposition


Class 041. All goods and services in the class are opposed, namely: Physical fitness training of individuals and groups
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3151597	Application Date	12/30/2003
Registration Date	10/03/2006	Foreign Priority Date	NONE
Word Mark	POPCYCLE		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 2003/12/30 First Use In Commerce: 2003/12/30 Motor scooter helmets Class 012. First use: First Use: 2003/12/30 First Use In Commerce: 2003/12/30 Motorized scooters; accessories for motorized scooters, namely, trunk organizer and cargo cases, soft-sided carrybags that attach to vehicle seats and semi-fitted covers for motorized scooters Class 025. First use: First Use: 2003/12/30 First Use In Commerce: 2003/12/30 Clothing, namely, hats, shirts, jackets and sweaters

U.S. Registration No.	3151598	Application Date	12/30/2003
Registration Date	10/03/2006	Foreign Priority Date	NONE
Word Mark	POPCYCLE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2003/12/30 First Use In Commerce: 2003/12/30 Motor scooter helmets Class 012. First use: First Use: 2003/12/30 First Use In Commerce: 2003/12/30 Motorized scooters; accessories for motorized scooters, namely, trunk organizer and cargo cases, soft-sided carrybags that attach to vehicle seats and semi-fitted covers for motorized scooters Class 025. First use: First Use: 2003/12/30 First Use In Commerce: 2003/12/30 Clothing, namely, hats, shirts, jackets and sweaters		

Attachments	78346640#TMSN.jpeg (1 page)(bytes)
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	78346646#TMSN.jpeg (1 page)(bytes) Popcycle Statement of Grounds for Opposition--Win7.pdf (4 pages)(326457 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/William Higley/
Name	William Higley
Date	08/10/2012

1. Applicant's Mark is virtually identical to Opposer's Mark, in standard character, in appearance, and spelling, and is identical in pronunciation.
2. Because of the identity between Applicant's Mark and Opposer's Marks, there is a likelihood of confusion as between the source of Applicant's services and Opposer's goods, within the definition and application of Section 2(d) of the Act.
3. Applicant's fitness services are closely related to Opposer's goods, because of the Commercial association between the "cycle" element of both marks and Applicant's fitness services. The close commercial association is demonstrated by the following 28 third party trademarks, all of which use the element, "cycle," or words suggestive thereof, in association with fitness services or products:
 1. American Cycle and Fitness, Ser. No. 76153314, IC 035, Retail outlets featuring exercise equipment.
 2. American Cycle and Fitness, Ser. No. 75925953, IC 035, Retail outlets featuring exercise equipment, Design suggestive of a bicycle wheel plus words.
 3. American Cycle and Fitness we make cycling fun for everyone, Ser. No. 85599149, IC 035, Retail outlets featuring exercise equipment. Design suggestive of a bicycle wheel plus words.
 4. CYCLEology, Ser. No. 85490875, IC 041, Physical fitness training services; fitness services, namely, conducting spinning classes.
 5. SOULCYCLE, Ser. No. 85378841, IC 041, Physical fitness training services, et al.
 6. SOULCYCLE, Ser. No. 85378864, IC 038, Streaming of audio and video material on the internet featuring physical fitness classes, training and instruction.
 7. SOULCYCLE, Ser. No. 85378857, IC 009, Digital media, namely, pre-recorded compact discs, DVD's . . . all in the field of exercise, fitness, wellness and personal development;
 8. PASSION CYCLES, Ser. No. 85477037, IC 041, Conducting fitness classes; et al.
 9. **CYCLEHOUSE**, Ser. No. 85367310, IC 025, Apparel, namely, shirts, pants, shorts, et al.; IC 041, Providing fitness and exercise facilities for indoor cycling, et al, Design plus words.
 10. PowerCycling, Ser. No. 85318530, IC 041 Physical fitness training services et al.

11. STRIDE BIKE **FITNESS**, Ser. No. 85315581, IC 028, Conversion kit for a bicycle, et al. Design plus words.
12. **GO CYCLE FITNESS**, Ser. No. 85412482, IC 041 Conducting fitness classes, Design plus words.
13. GO CYCLE FITNESS, Ser. No. 85412464, IC 041, Conducting fitness classes.
14. CYCLES^{SMART}, Ser. No. 85649552 IC 044, Physical rehabilitation, improvement of cycling performance, et al.
15. POWERBIKE, Ser. No. 85182578, IC 028, Vibrating apparatus used in fitness and exercise programs, et al.,
16. HIP HOP CYCLE, Ser. No. 85187574, IC 041, Providing classes, workshops seminars and camps in the fields of fitness, exercise, et al. Design suggestive of a stylized bicycle.
17. **SERIOUSCYCLING**, Ser. No. 85456169, IC 041, Organizing, arranging and conducting cycling events; 028, fitness machines and equipment . . . namely . . . stationary cycles; 025, cyclist's jerseys; 039, Arranging, organizing, and conducting cycling tours and trips. Design plus words, letters, and/or numbers.
18. SKY PRO CYCLING, Ser. No. 85395905, IC 035, Advertising . . . bicycles and parts therefore . . . et al.
19. SKY PRO CYCLING, Ser. No. 85148483, IC 041, “. . .conducting classes seminars and workshops in the field of fitness, exercise, cycling, outdoor survival, bicycle racing . . . “ and 13 other classifications.
20. CYCFITNESS, Ser. No. 85632371, IC 041, Fitness, spinning, cycling and exercise centers indoor cycling centers, et al., and 12 other classifications.
21. Joy Ride Cycling Studio, Ser. No. 85452580, Reg. No. 4160888, IC 041, Providing fitness and exercise facilities.
22. JOYRIDE, Ser. No. 85164816, Reg. No. 4027085, IC 041, Providing physical fitness instruction and consultation in the field of indoor cycling, et al.
23. Life's a Trip. Enjoy the Ride!, Ser. No. 85236453, Reg. No. 4047047, IC 041, Providing fitness and exercise studio services, namely, providing indoor cycling fitness classes.

24. JOYRIDE, and design, Ser. No. 85315443, Reg. No. 4082991, IC 041, Providing physical fitness and exercise service, namely, indoor cycling, et al. Design is an image suggestive of a tire or cog wheel.

25. MY ADDICTION CYCLING AND YOGA STUDIO, and design, Ser. No. 85514470, IC 041, Physical fitness conditioning classes; Providing fitness and exercise studio services, namely, pilates instruction and training . . . indoor cycling and yoga instruction. Design includes a depiction of a bicycle wheel.

26. SPIN SANITY BEYOND INDOOR CYCLING, and design, Ser. No. 85632638, IC 041, Physical fitness instruction . . . indoor cycling instruction. The words, "Beyond Indoor Cycling," appear in the design.

27. PEDAL FORWARD, and design, Ser. No. 85478488, IC 041, Counseling services in the field of physical fitness, Design shows a stylized individual riding a bicycle.

28. PEDAL NYC, and design, Ser. No. 85523727, IC 041, Providing fitness and exercise facilities; Design shows a stylized individual riding a bicycle.

4. Furthermore, Applicant's fitness services are closely related to Opposer's goods, because of the Commercial association between the "pop" element of both marks and Applicant's fitness services. The close commercial association is demonstrated by the following 5 third party trademarks, all of which use the element, "pop," in association with fitness services or products:

1. HEALTHPOP, Ser. No. 85442393, IC 038, Transmission of information and audiovisual content via websites . . . in the field of health and fitness.

2. Shimmy Pop, Ser. No. 85266363, Reg. No. 4038615, IC 041, Conducting fitness classes; Dance instruction; Physical fitness instruction.

3. POP FLY BOYS, Ser. No. 85489239, IC 041, Entertainment in the nature of providing an informational and entertainment website in the fields of celebrity gossip, entertainment sports and fitness.

4. POP Pilates, Ser. No. 85606028, IC 009, Audio and visual recordings featuring music and artistic performances . . . Downloadable graphics featuring Pilates exercises done to Pop music for use on physical fitness.

5. INSTAPOP, and design, Ser. No. 85534950, IC 041, Entertainment in the nature of providing an informational and entertainment website in the fields of celebrity gossip, entertainment sports and fitness.

5. Applicant's services and Opposer's goods are intended for consumption by the same marketplace participants and populations, that is, young, physically active and vigorous individuals who have an interest in physical fitness.

6. Opposer's Marks are descriptive of characteristics of certain of Opposer's goods, namely, motorized scooters, or cycles and the popping sound of their small engines, as distinct from Applicant's Mark, which is purely fanciful or arbitrary and has no relationship to any characteristic of its services.

7. Both the Applicant's mark and the Registrant's marks have the wording "Popcycle" in them. The fact that Applicant's mark capitalizes the letter, "C" in the middle of its mark is *de minimis* and insignificant both visually, and inasmuch as it does not affect the pronunciation of the word, "Popcycle." Rather, Applicant's mark is in every relevant aspect identical to Registrant's marks. Therefore, the marks create a similar commercial impression and confusion as to the source of the goods and services is likely to arise.